

REMARKS

Claims 1, 3-56, 59-62, 64-67, and 69 remain in the referenced application. Claims 1, 3, 9, 13-14, 16-19, 36, 43-44, 55, 59, 60-62, 64-67, and 69 have been amended, and claims 2, 57-58, 63, 68, and 70-81 have been canceled.

Responsive to the Restriction Requirement contained in the Office Action dated March 24, 2004, Applicant elects claims 1-69 (Group I) for examination. Accordingly, Applicant has canceled claims 70-81 (Group II).

Responsive to Applicant's alleged failure to comply with the one or more conditions required for receiving the benefit of an earlier filing date under 35 U.S.C. §119(e), Applicant has amended the specification in page 2, line 1, to include a reference to Applicant's prior provisional patent application.

Claims 63-67 stand objected to under 37 C.F.R. §1.75(c) as being of improper dependent form for failing to further limit subject matter of the previous claim. Responsive to this objection, Applicant has canceled claims 63 and amended claims 64-66 to positively recite that the ingredient metering assembly receives further desired ingredients. Similarly, claim 67 has been amended to recite the heater heats the water to a desired temperature. Applicant accordingly respectfully submits claims 64-67 are proper because each recites an apparatus and an associated function that was not previously claimed. Applicant therefore respectfully requests the withdrawal of the objection to claims 64-67 under 37 C.F.R. §1.75(c).

Claim 43 stands objected to under 35 U.S.C. §112, second paragraph. Responsive thereto, Applicant has amended claim 43 by deleting the terms "one or more" and substituting therefor "multiple", thereby providing for simultaneous conveyance of more than one form. Applicant therefore respectfully requests the withdrawal of the 35 U.S.C. §112, second paragraph, rejection of claim 43.

Claims 1, 19, 26-29, and 44 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, and 4-8 of copending Application No. 10/374,886. The Examiner admits claims 1, 19, 26-29, and 44 are not identical subject matter to claims 1, 2, and 4-8 of copending Application No. 10/374,886. The Examiner however asserts

claims 1, 19, 26-29, and 44 would have been obvious to one of ordinary skill in the art at the time the invention was made in view of claims 1, 2, and 4-8 of copending Application No. 10/374,886. As the outstanding rejection is based upon the judicially created doctrine of obviousness-type double patenting, Applicant submits herewith a Terminal Disclaimer in order to overcome the outstanding rejection. In view of the submission of the Terminal Disclaimer, Applicant respectfully submits the rejection of claims 1, 19, 26-29, and 44 has been overcome and thus requests the withdrawal of the provisional rejection of claims 1, 19, 26-29, and 44 under the judicially created doctrine of obviousness-type double patenting over claims 1, 2, and 4-8 of copending Application No. 10/374,886.

Claims 1, 43, and 68 stand rejected under 35 U.S.C. §102(b) by Russian Reference No. 2,078,690. Claims 2-18 however have been indicated as allowable if rewritten in independent form. Responsive to the above-recited rejection with respect to claim 1, Applicant accordingly has canceled claim 2 and incorporated the limitations contained therein into claim 1. Applicant therefore respectfully submits that claim 1 as amended and claims 3-18 are patentable over Russian Reference No. 2,078,690.

Claims 19-35 have been indicated as allowable over the prior art of record if rewritten in independent form. Claim 19 accordingly has been rewritten in independent form. Since a Terminal Disclaimer overcoming the rejection of claim 19 under the judicially created doctrine of obviousness-type double patenting over claims 1, 2, and 4-8 of copending Application No. 10/374,886 has been filed herewith, Applicant respectfully submits claims 19-35 are patentable.

Claims 36-42 have been indicated as allowable if rewritten in independent form. Claim 36 accordingly has been rewritten in independent form. Furthermore, responsive to the above-recited rejection with respect to claim 43, Applicant has amended claim 43 to depend from allowed claim 36. Applicant accordingly respectfully submits claims 36-43 are patentable.

Claims 44-54 have been indicated as allowable over the prior art of record if rewritten in independent form. Claim 44 accordingly has been rewritten in independent form. Since a Terminal Disclaimer overcoming the rejection of claim 44 under the judicially created doctrine of obviousness-type

double patenting over claims 1, 2, and 4-8 of copending Application No. 10/374,886 has been filed herewith, Applicant respectfully submits claims 44-54 are patentable.

Claims 55 and 58 stand rejected under 35 U.S.C. §103(a) by Russian Reference No. 2,078,690 in view of Holik (U.S. Patent No. 5,564,823). Claims 56 and 57 however have been indicated as allowable if rewritten in independent form. Responsive to the above-recited rejection with respect to claims 55 and 58, Applicant accordingly has canceled claims 57 and 58 and incorporated the limitations contained therein into claim 55. Applicant therefore respectfully submits that claim 55 as amended and claims 56 are patentable over Russian Reference No. 2,078,690 in view of Holik.

Claims 58, 59, 61-67, and 69 stand rejected under 35 U.S.C. §103(a) by Russian Reference No. 2,078,690 in view of Jensen (U.S. Patent No. 6,676,862). Claims 56 and 57 however have been indicated as allowable if rewritten in independent form. Responsive to the above-recited rejection with respect to claims 58, 59, 61-67, and 69, Applicant accordingly has canceled claims 57 and 58 and incorporated the limitations contained therein into claim 55. Applicant further has canceled claim 63 thereby rendering the rejection of that claim moot. Applicant therefore respectfully submits that claim 55 as amended and claims 59, 61, 62, 64-67, and 69 are patentable over Russian Reference No. 2,078,690 in view of Jensen.

Claim 60 stands rejected under 35 U.S.C. §103(a) by Russian Reference No. 2,078,690 in view of Jensen (U.S. Patent No. 6,676,862) further in view of Holik (U.S. Patent No. 5,564,823). Claims 56 and 57 however have been indicated as allowable if rewritten in independent form. Responsive to the above-recited rejection with respect to claim 60, Applicant accordingly has canceled claims 57 and 58 and incorporated the limitations contained therein into claim 55. Applicant therefore respectfully submits that claim 55 as amended and claims 59 and 60 are patentable over Russian Reference No. 2,078,690 in view of Jensen further in view of Holik.

Responsive to the above-recited rejection with respect to claim 68, Applicant accordingly has canceled claim 68 and incorporated the limitations contained therein into claim 55 as amended, which includes the limitation of allowed claim 57. Applicant therefore respectfully submits that claim 55 as


amended is patentable over Russian Reference No. 2,078,690.

In view of the foregoing, Applicant respectfully requests reconsideration of the rejected claims and further earnestly solicits early allowance of the application.

Respectfully submitted,

LAW OFFICES OF CHRISTOPHER L. MAKAY
1634 Milam Building
115 East Travis Street
San Antonio, Texas 78205
(210) 472-3535

DATE: 8 July 2004

BY: 
Christopher L. Makay
Reg. No. 34,475

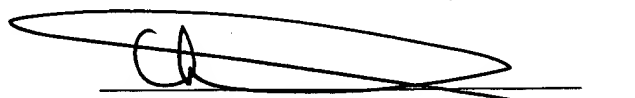
ATTORNEY FOR APPLICANT

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated below, addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Express Mail No. EV 43336505B US

Date: 8 July 2004


Christopher L. Makay